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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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#6



FILE:



Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: JUL 22 2010

IN RE:

Applicant:



APPLICATION:

Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Tang Syo*  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated December 4, 2007.

On appeal, counsel asserts that the applicant's spouse has been suffering from depression and other medical issues since the applicant left the United States. *Form I-290B, Notice of Appeal or Motion*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; medical bills and records for the applicant's spouse; a statement from a colleague of the applicant's spouse; and a statement from a child of the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal. The AAO notes that the record also includes a document in the Spanish language unaccompanied by a certified translation. Accordingly, the AAO will not consider this document. *See* 8 C.F.R. § 103.2(b)(3).

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that the applicant entered the United States without inspection in September 2000 and voluntarily departed on September 24, 2006, returning to Mexico. *Consular Memorandum, American Consulate General, Ciudad Juarez, Mexico*, dated October 16, 2006. The applicant, therefore, accrued unlawful presence from September 2000 until she departed the United States on September 24, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her September 24, 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience as a result of her inadmissibility is not directly relevant to the determination as to whether she is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Mexico. *Approved Form*

*I-130, Petition for Alien Relative.* The applicant's spouse claims to have six children. *Statement from the applicant's spouse*, dated December 14, 2007. The record does not include birth certificates or other evidence of this claim. Both of the applicant's spouse's parents are deceased. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The record does not address how the applicant's spouse would be affected if he resides in Mexico. The record does not address employment opportunities for the applicant's spouse in Mexico, nor does the record document, through published country conditions reports, the economic situation in Mexico and the cost of living. The record includes medical documentation showing the applicant's spouse has undergone a hernia operation. *Medical records for the applicant's spouse.* He also states that he has been diagnosed as borderline diabetic. *Statement from the applicant's spouse*, dated December 14, 2007. While the AAO acknowledges documentation regarding the hernia of the applicant's spouse, it notes that the record fails to include documentation from a licensed healthcare professional regarding the borderline diabetes diagnosis. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, the record does not document whether the applicant's spouse currently suffers from any type of health condition that would require treatment in Mexico, physical or mental, and if so, whether he would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Mexico. *Approved Form I-130, Petition for Alien Relative.* Both of the applicant's spouse's parents are deceased. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The record includes medical documentation showing the applicant's spouse has undergone a hernia operation. *Medical records for the applicant's spouse.* Counsel also states that the applicant's spouse has been facing severe depression as a result of being isolated and lonely. *Attorney's brief.* Counsel further notes the applicant's spouse suffers from headaches and dizziness when he feels lonely, he has lost weight, and his appetite has diminished considerably. *Id.* The applicant's spouse also states that he has been diagnosed as borderline diabetic. *Statement from the applicant's spouse*, dated December 14, 2007. While the AAO acknowledges documentation regarding the hernia of the applicant's spouse, it notes that the record fails to include documentation from a licensed healthcare professional regarding the other physical, emotional and medical issues. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant's spouse notes that when his wisdom teeth were pulled, he could not find anyone to go with him to the hospital, as his children live in Texas. *Statement from the applicant's spouse*, dated December 14, 2007. He further asserts that he needs the applicant by his side. *Id.* While the AAO acknowledges the difficulties of living alone, it notes that the record does not include documentation from a licensed healthcare professional regarding the psychological effect a separation from the applicant has had upon the applicant's spouse. The record also fails to address whether a separation from the applicant is affecting the applicant's spouse on a financial level. While the record includes medical bills for the applicant's spouse, the record fails to include

additional documentation, such as rent/mortgage statements, utility bills, or credit card bills, regarding the various expenses of the applicant's spouse. The record also fails to include earnings statements and tax statements for the applicant's spouse. Additionally, there is nothing in the record to show that the applicant is unable to contribute to her family's well being from a place other than the United States.

The AAO acknowledges the difficulties faced by the applicant's spouse. However, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.